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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Eighteenth session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 4 May 1998, at 10 a.m.

Chairperson: Mr. ALSTON

later: Mr. GRISSA (Vice-Chairperson)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Third periodic report of Poland (E/1994/104/Add.13; E/C.12/Q/POL/1; HR/CESCR/NONE/98/3; E/C.12/A/POL/1)

1. At the invitation of the Chairperson, the Polish delegation took places at the Committee table.

2. Mrs. BORUTA (Poland), introducing the third periodic report of Poland, said that the data it contained covered the period 1992-1994 and some were no longer relevant. An update on the changes that had taken place in Poland in the social and economic spheres was therefore necessary, the most significant change having been the adoption in 1997 of a new Constitution reflecting the aspirations of a democratic State. In 1996 the Labour Code had been revised to bring its provisions into line with the standards of the International Labour Organization (ILO), the Council of Europe and the European Union. In June 1997, Poland had been the first country of central and eastern Europe to ratify the European Social Charter.

3. In view of those developments, the new Polish Government had adopted a series of measures in the following main areas: social security reform, with the new system scheduled to enter into force in 1999; action to fight unemployment through new vocational training programmes fostering employability; adoption of a policy that was more supportive of families, including changes in the tax system, increased family benefits and improved schemes for assistance to large families; reform of the health-care system with provision for the introduction of a general sickness insurance system based on independent medical insurance funds; and educational reform aimed at adapting education to the requirements of the market economy and local community needs.

4. Recent economic successes - a rise of over 6 per cent in gross domestic product, 11 per cent growth in industrial output and a doubling of average annual wages - had put Poland in a position to be able to fulfil its obligations under article 2, namely, achieving progressively the full realization of the rights recognized in the Covenant. Furthermore, in order to prepare for Poland's membership of the European Union, the Government had embarked on a number of measures to adjust to established European Union standards; that involved drawing up standards concerning labour law and other aspects of social policy, employment policy, free movement of workers and the harmonization of national social security systems. By bringing its standards into line with those of the European Union, Poland would be fulfilling its obligations under the Covenant. The achievement of that objective would be facilitated by the recently adopted Constitution, which would now be outlined by another member of the delegation.

5. Mr. DRZEWICKI (Poland) said that in 1989 Poland had completely changed political systems, becoming a State based on the rule of law and democratic

pluralism. In 1992, the authorities had included in the "Small Constitution" the principle of social justice, which acted as a safety valve for many aspects of social policy. The Constitutional Court had drawn on that principle in considering complaints referred to it concerning the reform of the social security system. On 2 April 1997, the Parliament had adopted the new Constitution, which gave pride of place to the twofold concept of respect for and protection of human rights and fundamental freedoms.

6. The new Constitution contained many innovative provisions, in particular, the principle of equality before the law, the prohibition of any form of discrimination in political, social or economic life, and the indivisible and interdependent character of human rights and fundamental freedoms. But by far the most significant innovation was the introduction of redress procedures in accordance with the principle of "ubi jus, ibi remedium". Such remedies could be either judicial or extrajudicial (the right to bring a matter before the Ombudsman, for example); they included the right to compensation for any person whose rights had been infringed by the public authorities, the right to appeal against a judgement or decision handed down by a lower court and the right to refer a matter to the Commissioner for Citizens' Rights (Ombudsman) in the event of a violation of human rights by the public authorities.

7. With reference to paragraph 6 of General Comment 3, adopted by the Committee at its fifth session, the far-reaching political and socio-economic changes that had taken place in Poland since 1989 had not resulted in a weakening of economic, social and cultural rights. Indeed, quite to the contrary, the clear distinction drawn between rights that were directly applicable and those that were not had led to the consolidation of the status of economic, social and cultural rights in the Polish legal system. Moreover, unlike during the period up to 1989, economic, social and cultural rights that were immediately applicable could now be invoked before the courts and administrative bodies. In the final analysis, the new approach should make it possible to establish a realistic and viable legal framework more conducive to the promotion and protection of all economic, social and cultural rights.

8. With regard to the operation of the complaints procedure envisaged as part of an optional protocol to the Covenant, the Polish Government, while agreeing in principle, wished to point out that the Committee could perform that additional task only if it were assured of the political will of States, of adequate financial resources and of increased capabilities. The idea of a protocol was sound, but the Committee and all other United Nations bodies must apply themselves to reducing the accumulated backlog of work. Another idea that Poland had strongly supported was the adoption by the Commission on Human Rights at its previous session of a draft resolution submitted by Portugal concerning the designation of the first rapporteur on economic, social and cultural rights. Even if that rapporteur's mandate was confined to education, the Commission's decision had been a great breakthrough.

9. In conclusion, he pointed out that his experience in considering complaints brought before the European Court of Human Rights showed that issues relating to economic, social and cultural rights could be dealt with more or less successfully using first-generation human rights instruments. A case in point was that of detainees demanding access to medical services:

the right to medical attention could be assured by means of a classic procedure under the International Covenant on Civil and Political Rights.

10. The CHAIRPERSON invited the Committee members to put questions to the delegation of Poland concerning items 1 to 9 on the list of issues.

11. Mr. GRISSA, supported by Ms. JIMENEZ BUTRAGUEÑO, asked whether non-Catholics, in particular agnostics, suffered on account of the predominant role of the Catholic religion in society and political life.

12. Mr. RIEDEL asked what steps the Government intended to take to implement those provisions of the Covenant that the Committee, in its General Comment 3, paragraph 5, had considered to be capable of immediate application by judicial and other organs. In that regard, the delegation of Poland might wish to clarify which rights, in its opinion, were "not of a self-executing character" (reply to question 6 in the list of issues to be taken up). It would be interesting to know what the Government intended to do to familiarize State officials, such as members of the judiciary, with the provisions of the Covenant, in order to enable them to take them into account in their decisions.

13. It would also be useful to know what the Government had done to deal with the backlog of cases before the courts and what action had been taken in response to the numerous complaints received by the Ombudsman.

14. Mr. CEAUSU noted that, in its written response to question 3, the Government of Poland stated that article 91 of the Constitution provided that, in cases of conflict between the provisions of a treaty ratified by Poland and domestic legislation, the treaty provisions prevailed. He asked whether that rule applied only to multilateral treaties or to bilateral treaties as well, for example those that Poland had concluded with neighbouring countries such as Germany and Ukraine, and with Romania, concerning the rights of national minorities. With regard to the backlog of cases before the courts, it would be interesting to know if judges' salaries were commensurate with their responsibilities.

15. Mr. WIMER asked why the Holy See and Poland had elected to regulate the status of the Catholic Church by concordat rather than by a modus vivendi.

16. Mr. SADI said he understood that the Catholic Church played a prominent role in the country's political and legislative life. It would be useful to know the situation regarding the separation of Church and State in Poland.

17. Mr. RATTRAY asked what part non-governmental organizations (NGOs) had played in preparing the third periodic report and on what points their opinions had diverged from that of the Government. It would also be interesting to know how the exercise of the rights set forth in the Covenant was guaranteed in the private sector in view of the tide of economic liberalization and privatization sweeping the country.

18. Mr. ADEKUOYE noted that, according to the Government's written reply to question 5, the Ombudsman had requested the Minister of Labour to grant financial assistance to the disabled for car purchase. He wondered what the outcome of that request had been.

19. Mr. Grissa took the Chair.

20. Mr. DRZEWICKI (Poland) said that the separation between Church and State was enshrined in the Constitution and that the relationship between the State on the one hand and the Catholic Church and eight other denominations on the other were governed by special legislation.

21. The Concordat that Poland had concluded with the Holy See governed the appointment of bishops and defined State and Church jurisdiction in certain areas such as divorce. It also addressed the issue of religious instruction in State schools. It should be noted in that regard that, in such schools, religious instruction classes were optional and were arranged only at the specific request of parents.

22. It should not be forgotten that the Catholic Church had helped Poland to survive the yoke of countries such as Prussia, Russia and Austria, and had played a vital role in the opposition to the Communist regime. The situation had changed completely with the advent of democracy in 1989. The Government and the Church had had to adapt to the new situation. Church actions should now be confined to the spiritual domain.

23. It was quite in order for the episcopacy to give its point of view on such questions as sex education in school or on abortion, but in the last analysis it was the legislature, as the representative of the people, that decided.

24. Under article 91 of the Constitution, the treaties ratified by Poland - whether multilateral or bilateral - were incorporated into domestic law after promulgation and could therefore be applied directly by the competent authorities unless, as stated in article 91, such implementation depended on the enactment of a statute. Some treaties contained provisions that could not be applied directly.

25. In cases of conflict between the provisions of a ratified treaty and the provisions of domestic law, the former prevailed. In short, a treaty had higher authority than ordinary legislation but was subordinate to the Constitution. The Constitutional Court therefore checked whether treaties the Government intended to ratify were compatible with the Constitution. In the event of conflict, the Government could elect either not to ratify the treaty or to set in motion the process of amending the Constitution.

26. In practice, it would take a long time for officers of the judiciary and civil servants to familiarize themselves with the provisions of international treaties in general and of the International Covenant on Economic, Social and Cultural Rights in particular and to apply them. For that reason, Poland did not merely incorporate international treaties into its domestic legislation.

A large number of human rights in general and economic, social and cultural rights in particular were explicitly mentioned in the Constitution and the legislation.

27. The considerable backlog of legal cases to be heard was a serious problem. On average, it currently took between 9 and 12 months to try cases, which indicated the existence of a structural problem in the administration of justice. It must be admitted, however, that such a situation was characteristic of the majority of European democracies. Since the beginning of the democratization movement in 1989, the jurisdiction of judicial courts had expanded by nearly 30 per cent as the administrative courts had lost ground, and that presented problems. The Government of Poland was taking steps to try to rectify the situation. For example, it had decided to raise judges' salaries in order to forestall bribery attempts prejudicial to the rule of law. The new versions of the Penal Code, the Code of Criminal Procedure and the Code on the Application of Sentences, which were to come into force on 1 September 1998, also included a number of innovations - such as the plea bargaining system - aimed at simplifying and speeding up proceedings. Another, more far-reaching reform that was under way should lead to the establishment of a three-tier judicial structure that would make it easier for individuals to obtain justice.

28. With regard to economic, social and cultural rights in the context of privatization, the Government of Poland had made the required amendments to the Labour Code with the aim of protecting workers' rights, in accordance with the provisions of the international instruments to which Poland was a party. The national legislation contained, for example, the necessary provisions to prohibit discrimination in employment. On the other hand, a number of concepts that were widely accepted in the developed countries, such as protection against unfair dismissal, had not yet acquired the force of law in Poland. Nevertheless, the basic problem was to ensure that employers, who were growing in numbers with the liberalization of the economy, actually observed labour regulations.

29. Mr. JAKUBOWSKI (Poland) read out an extract from the preamble to the Constitution and emphasized that the legislature had been careful to state that all citizens, whether believers or non-believers, were equal before the law, which demonstrated that Catholicism was not a State religion. National minorities accounted for only 1 million persons out of a total population of more than 48.5 million. Their rights were nonetheless guaranteed under the Constitution and under the bilateral treaties that Poland had concluded with all neighbouring countries, including Russia. Moreover, those bilateral treaties prevailed over domestic law if they provided for more favourable treatment for the minorities in question. Thus, under the treaty concluded with Germany, the German minority in Poland had been granted a number of seats in Parliament. The Government had also decided to make the same provision for the Ukrainian community.

30. Regarding the outcome of cases submitted to the Ombudsman, his delegation would pass information on the matter to the members of the Committee as soon as it was available. The Ombudsman had extensive powers, including the power to contest final decisions made by the courts. The report on the implementation of human rights in Poland submitted by the Ombudsman

every year to Parliament was one of the many means available to him to encourage law-enforcement personnel to respect human rights and to ensure that they were respected. The Minister of Labour had approved the Ombudsman's request for a grant to be paid to disabled persons wishing to buy a car adapted to their needs.

31. Magistrates' salaries were between three and five times higher than the average wage (1,100 zlotys) and well in excess of those of the forces of law and order. The shortage of qualified judges was due to the fact that the booming private sector was attracting the best lawyers into the field of company law by offering levels of pay that the State was obviously unable to match, given its budget constraints.

32. The consultations held between the Government and the social partners to draft Poland's report to the Committee had not been conducted in a formal manner since the preparation of the report was the Government's responsibility. Trade unions had nevertheless received a copy of the draft report for comment. The NGOs concerned had also been informed by the Ministry of Labour of progress in the drafting work. Moreover, the delegation of Poland included two representatives from movements for the advancement of women, a trade unionist and a representative of an employers' organization.

33. Mrs. BORUTA (Poland), returning to the question of improvement of the administration of justice, said that the Polish Government, in view of its prospective membership of the European Union and the possibility of obtaining grants for the judicial system under the third pillar of the Maastricht Treaty, had listed the measures to be taken to make it easier for individuals to gain access to courts and reduce the time it took for cases to be heard. The collaboration with the International Labour Organization (ILO) and the Council of Europe in that area had also proved extremely fruitful.

34. Mr. AHMED said he was impressed by the volume of information and technical details testifying to the Polish Government's desire to put an end to discrimination. In practice, however, pockets of discrimination persisted, and he asked the delegation to describe what measures were planned to correct that situation. For example, in its concluding observations on the thirteenth and fourteenth periodic reports of Poland, the Committee on the Elimination of Racial Discrimination, seriously concerned at several acts of violence relating to racial discrimination targeting especially the Jewish and Roma minorities, had recommended that the Polish Government should take all measures to ban any non-political groups or associations that disseminated such ideas (CERD/C/304/Add.36, paras. 10 and 15). Moreover, in its 1997 report, the United States Department of State had pointed out that the Roma community, which numbered around 30,000 members, had a disproportionately high unemployment rate and had suffered more adverse effects from privatization than ethnic Poles. The third periodic report of Poland admitted the existence of some discrimination in public service in general, and in teaching in particular (E/1994/104/Add.13, para. 24). Why continue to restrict teaching posts to Polish nationals when the country's imminent accession to the European Union would force the Government to allow foreign teachers to come and work in Poland? By the same token, why was the minimum wage not applicable to construction workers or seasonal agricultural workers from the former Soviet Union? Lastly, the Polish Federation for the Advancement of

Women and for Family Planning had indicated that minorities encountered a wide range of obstacles of a technical nature, such as an insufficiently high number of pupils, when they tried to organize their own religious instruction courses, so that a right recognized by law was not in fact being implemented. By contrast, the catechism classes organized by schools between midday and 2 p.m. were attended by large numbers of non-Catholic pupils who feared being stigmatized by their classmates if they did not do so.

35. Mr. ANTANOVICH said he would like more information on how it was possible to state, contrary to what the Constitution declared, that Poland was not a Catholic State. He would also like to know on what legal basis the German minority was permitted to have representatives in the Polish Parliament when there was no German autonomous region in Poland. Could the same benefit given to Poles of German and Ukrainian descent also be granted to those of Belarusian stock, of whom there were more than 200,000 in Poland?

36. Mr. SADI said he wondered whether the democratic reforms in Poland were not being undertaken at the expense of women, of whom the proportion in decision-making posts appeared to have diminished considerably since 1989.

37. Mr. CEVILLE asked how the Ombudsman was elected and what action had been taken on the complaints he had considered.

38. Mr. CEAUSU said he understood that many countries allowed foreigners to come and teach on their territory. By doing the same, Poland would be able to remedy the shortage of teachers, in particular in the area of foreign languages.

39. Mrs. BONOAN-DANDAN said that women in Poland, who generally had a higher level of education than men, had been paid a wage amounting to only 70 per cent of a man's wage for the same work in 1996 and she wondered whether the gap had narrowed since then. In that regard, the Polish delegation might be able to explain the statistics that had been provided, which were not very clear. Since the principle of equal pay for equal work had been established, notably in the Polish Constitution, article 33.2, she wondered what mechanism had been put in place to give effect to that provision and, in particular, whether any cases of violation of that principle had come before the Polish courts.

40. Mr. ADEKUOYE asked whether the inter-ministry group on national minorities, set up in Poland in June 1997 to prepare a plan of action designed to guarantee minorities the full enjoyment of their rights and to coordinate the work of national bodies with jurisdiction in that field, had submitted its report and, if so, what recommendations it had made.

41. The 1962 Nationality Act had discriminated against women, by not allowing a Polish woman to transmit Polish nationality to her foreign husband and he wondered whether that provision had been retained in the new Constitution. In addition, under a provision of the Social Security Act, only women were entitled to receive the grant for care of a sick child, a situation that encouraged discrimination against them in recruitment. It would be

interesting to know if the Polish Government intended to do away with that provision and all other provisions that discriminated against women in the area of employment.

42. Mr. THAPALIA asked whether the Polish Government, in accordance with its obligations under the Covenant, intended to take the necessary steps to put a stop to discrimination against women with regard to pay, the transmission of nationality to a foreign spouse and in a number of other areas.

43. Mr. DRZEWICKI (Poland) said he recognized that the provisions of the ministerial order on the application of the law on the education system could be seen as discriminating against certain minorities with regard to the organization of religious instruction classes. It was indeed necessary to have at least seven pupils in order to arrange such instruction in a school. In small towns where it was not possible to find that many pupils, religious minorities could still arrange such instruction on their own premises. Other complaints concerning religious instruction related to the fact that catechism classes were frequently held in the middle of the school day and that students who did not attend were subjected to a certain amount of stigmatization. Complaints of that kind had been submitted to the Ombudsman and one had even gone as far as the European Court of Human Rights, but the Court had not considered that such stigmatization constituted discrimination. The Minister of Education had meanwhile recommended that religious education classes should be scheduled preferably at the beginning or end of the school day, in order to avoid children belonging to religious minorities encountering such situations. In addition, the episcopacy had urged catechism teachers to promote a spirit of pluralism in children and instil a sense of tolerance for other religions. The attitude of parents and other students towards those belonging to religious minorities was also changing for the better and all stigmatization should eventually begin to fade and disappear completely.

44. Returning to the question of the status of the Catholic Church, he repeated that it was not a State Church since the religious authorities had no direct influence on the enactment or implementation of legislation, or on the decisions of the judiciary. Nevertheless, the Church could not be prevented from expressing its opinion on social problems.

45. With regard to ethnic minorities, and in particular the German minority, the electoral legislation set no minimum percentage of votes for the election of Members of Parliament.

46. Under the Constitution and an act of 1998, the Ombudsman was elected for five years by the lower house of Parliament with the approval of the upper house. During his term of office, the incumbent was not allowed to perform other work - with the exception of university teaching - and should not be a member of any political party or trade union; someone might, however, be put forward as a candidate for the post by a political party. The Ombudsman's job was to receive complaints from any persons who felt that their rights had been violated and he could also address any matter of public concern. The Ombudsman could intervene directly by putting a question to the relevant public service and, if he deemed the response to be unsatisfactory, could take it up at the Government level. The Ombudsman was empowered to appeal against a judicial decision, but that was a special remedy. The Ombudsman was also

competent to give an opinion on the compatibility of a bill before Parliament with the general principles of the rule of law and social justice and to apprise the Speaker of the Parliament of that opinion. He was empowered to appeal to the Constitutional Court against any decision, law or regulation on the grounds of unconstitutionality. Lastly, the Ombudsman could use the media to initiate public debate on any situation that aroused his concern in the field of human rights or to address criticisms to the authorities. The Ombudsman undoubtedly played an important role and further details concerning the effectiveness of his actions would be supplied at a later stage. Generally speaking, however, the statistics showed that the office of Ombudsman was a very effective mechanism for the protection of human rights in Poland, not only because of its power to deal directly with the legislature but also because of the great authority of those who had occupied the post thus far - a professor of civil law, a professor of labour law and a former judge.

47. Mr. JAKUBOWSKI (Poland) said that teaching in a national minority language in schools was regulated by a Ministry of Education Order dated 24 March 1992. In regions with a high concentration of minorities there were schools where all classes were taught in a minority language. The number of schools where teaching was in German had increased nearly fourfold between the 1993/94 and 1996/97 school years, from 67 to 252, as a result of the fact that, since the installation of a democratic Government, it was no longer a crime to declare oneself a German-speaker, as it had been under the Communist regime. The number of such schools for the Belarusian, Slovak and Lithuanian minorities had not changed, while the number of schools for the Ukrainian minority had risen from 50 to 75, Ukrainians being in a more difficult position, despite their numerical importance, owing to their dispersal throughout Polish territory, ordered by the Communist authorities in the late 1940s. Moreover, teaching could be carried out in minority children's mother tongue in any other school as long as it was required by at least 7 pupils at primary level, or 14 at secondary level, and their parents requested it. If the minimum number of pupils could not be found in the same school, pupils from a number of schools could form a group, in which case the minimum was three. All those classes received public funding. It was also possible for minorities to establish private schools with teaching in their own language, and a number of such schools already existed. The provisions of the 1992 Order were thus very flexible and, even though situations amounting to discrimination could still arise, that was never government policy.

48. Some confusion seemed to have arisen with regard to foreigners teaching in Poland. Foreign nationals were in fact allowed to teach and did teach in Poland, the only difference between them and Polish teachers being that they could not obtain a permanent contract but were restricted to fixed-term contracts.

49. A number of attacks on the Jewish and Gypsy communities had indeed occurred in Poland. Those responsible were liable to criminal prosecution. The year before, however, the Committee on the Elimination of Racial Discrimination had said it considered Poland to have exemplary legislation concerning the treatment of national and ethnic minorities.

50. There were two reasons why Gypsies did not receive certain social benefits. For Gypsies of Polish nationality, the reason was their nomadic way of life. In order to receive some benefits it was necessary to have permanent employment or at least a permanent residence, as many welfare programmes were funded by the municipalities and persons not resident there were not eligible. In addition, after the changes in Eastern Europe in the early 1990s, a large number of Gypsies, chiefly from Romania, had settled in Poland after having crossed the border illegally or had remained after the expiry of their tourist visas. Such persons were in an irregular situation and therefore not entitled to social benefits.

51. With regard to the alleged discrimination against Belarusian, Ukrainian and Russian workers, there appeared to have been a misunderstanding. All persons in a regular situation were entitled to the minimum wage, and the cases in question must concern workers who had come from Belarus, Ukraine or the Russian Federation to work illegally in agriculture or the construction industry and who were therefore not protected by the provisions of the labour legislation. The Government was fairly lenient with them in view of the fact that their wages constituted an additional source of income for their countries of origin.

The meeting rose at 1 p.m.